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Filing date: **07/10/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92057023
Party	Plaintiff LuckyU Enterprises, Inc., dba Giovanni's Original White Shrimp Truck
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Date	07/10/2015
Attachments	Final Petitioner's Reply to Registrant's Opposition to Motion To Strike.pdf(18316 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Trial and Appeal Board

Cancellation No. 92057023

Registration Nos: 4,220,686 - GIOVANNI'S ALOHA FOODS
 4,224,400 - GIOVANNI'S SCAMPI MARINADE
 4,232,469 - GIOVANNI'S ORIGINAL WHITE SHRIMP TRUCK
 4,248,595 - GIOVANNI'S HOT & SPICY WE REALLY MEAN IT! SAUCE

LuckyU Enterprises, Inc., dba Giovanni's	:	
Original White Shrimp Truck	:	
	:	
Petitioner,	:	
	:	
v.	:	Cancellation No. 92057023
	:	
John "Giovanni" Aragona	:	
	:	
Respondent.	:	

Petitioner's Reply to Registrant's Opposition to Motion To Strike

Petitioner has been waiting for Registrant to file his brief for well over two months and there is no indication the brief will be forthcoming any time soon.¹ Registrant's excuse for failing to file a brief cannot last in perpetuity and Registrant's neglect is no longer excusable 80 days after the original due date.

A. Registrant's "Excuse" Is No Longer Sufficient

It is now irrelevant whether a lightning strike damaged counsel's computer on the eve the original brief was due, for that is certainly a plausible, albeit improbable, excuse for failing to timely file a brief. However, as of this date, Registrant has still failed to file his Trial Brief.

¹ Registrant has requested suspension of the proceedings until the Motions are decided. There is no explanation why Registrant cannot file his brief while these motions are pending.

Counsel has not provided an acceptable excuse for failing to file the brief sometime within the past 80 days. For that matter, counsel has not provided any reason why the brief could not have been filed 60 days after the lightning strike or even 30 days after the lightning strike. Counsel has not attempted to offer a justification for the ever-mounting delay. There is no articulated reason as to why Registrant has failed to file his Trial Brief at some point in the past 80 days.

B. Registrant's Current Excuse For His Delay Is Inexcusable

From what Petitioner can glean from Registrant's Opposition, Registrant's excuse is related to the ineptitude of "computer technicians" or technological deficiencies in Apple® products. Registrant asserts that "[t]o date, computer technicians have been unable to repair the hardware damaged in the storm and Registrant's Trial Brief has not been otherwise recovered." If Registrant is suggesting he is waiting on a technology breakthrough to recover seemingly unrecoverable material or if he is suggesting the Apple® technicians need more time to learn how to recover seemingly unrecoverable material, Registrant should have stated so. Once Registrant determined the brief was unrecoverable,² he should have begun preparing his brief anew. Nothing in the filed papers indicates Registrant has been preparing a new brief. Petitioner should not be further prejudiced because Registrant has failed to file a timely brief, despite an earlier "excuse" supporting some delay. The Board should, again,³ order the immediate filing of Registrant's trial brief.

C. Registrant Should File His Brief As Soon As Possible ("ASAP")

Registrant has had significant time to draft an entirely new brief to support his claims. In fact, Registrant has had the equivalent of more than two separate 30-day briefing periods to

² We assume this revelation was brought to Registrant's attention sometime in the past 80 days.

³ The Board already ordered the immediate filing of Registrant's Brief. See Dkt. #52.

prepare and file a new brief. Yet, Registrant has not only failed to provide an indication when his brief will be filed, but has also requested a suspension of proceedings pending the resolution of the outstanding motions.⁴ There is no need for such a suspension. The Board should not entertain Registrant's unrecoverable brief "excuse" and, instead, should review the merits of the case based on Petitioner's brief. However, Registrant should be on notice that there is no basis to suspend proceedings until the pending motions are resolved and Registrant should file his brief as soon as possible (and at least within the next 30 days from service of this Reply). The Board can ultimately decide whether or not to accept Registrant's Brief, but there is no need to further delay these proceedings.

CONCLUSION

Petitioner respectfully requests the Board strike Registrant's Reply or otherwise deny Registrant's alleged Motion to Extend Time and/or Registrant's alleged Motion to Reopen the Briefing Period and requests that the Board review the merits of the case based on Petitioner's Brief. Petitioner also prays the Board deny Registrant's request to suspend the proceedings pending the resolution of the outstanding motions. Petitioner takes this opportunity to again reiterate to Registrant to file his brief, if he ever intends to do so, as soon as possible, but not later than 30-days from service of this Reply.

Respectfully submitted,

Date: July 10, 2015

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⁴ Registrant improperly filed a Reply in Support of his own Motion for an Extension that was already previously granted by the Board. See Dkt. 52.

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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of July 2015 a true and correct copy of the foregoing

Petitioner's Reply to Registrant's Opposition to Motion To Strike on Respondent's Counsel,

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s/Daniel Mullarkey/

Daniel Mullarkey